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IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6531 OF 2006

Gorakhnath S. Kamble) ... Petitioner

Vs.

The State of Maharashtra & Ors.... Respondents.

Mr. V. S. Deokar, Advocate for the petitioner

Mr. R.D. Rane, AGP for respondent No.1.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 19, 2007.

P.C.:

. Rule. Heard both the advocates. Petitioner is in the employment of Sangli Zilla Parishad, as an Assistant Teacher. The petitioner belongs to a notified Scheduled Caste, namely Hindu Mahar. It is the case of the petitioner that in the year 2004 for the first time he came to know that the date of birth in the school register was wrongly recorded. This knowledge came to him, as he made search in the record of Birth & Deaths register, maintained by the State Government and he found that his correct date of

birth is 9-5-1951, whereas in the school register it was shown as 21-6-1949. Petitioner also points out that not only the petitioner's but also his brothers and sister's date of birth in the school register was shown as 10th June. It is pointed out that the basis on which the date of birth was recorded is not known.

. Petitioner relies on the entries in birth and death record, which shows that petitioner was born on 9-5-1951. Petitioner relies on the resolution of the Government dated 16th March 1983 whereby amendment was made to Rule 26.4 of Appendix to the Secondary School Code. By the amendment, even a student no longer studying has been allowed to apply to the relevant officer in the area of the Zilla Parishad to make alteration in the date of birth, based on documentary evidence available. The petitioner further states that the date of birth in the service record was based on the school leaving certificate and as there is an error in the school leaving certificate itself, the school as well as Zilla Parishad be directed to make relevant change.

2. On behalf of State Government, our

attention is invited to the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Under Rule 38(2)(f) it is provided that once an entry of date of birth is made in the service book, no alteration of the entry should afterwards be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. Other instructions to the alteration is that normally, no application for alteration of the entry regarding the date of birth as recorded in the service book or roll of a Government Servant should be entertained after a period of five years commencing from the date of his entry in Government service. Relying upon this, it is argued that the period of five years having expired, no changes can be effected. Reliance has been placed on the judgement of the Supreme Court in **Chief Medical Officer, Appellant Vs. Khadeer Khadri, Respondent [AIR 1995 Supreme Court 850]** to point out that if the employee fails to take opportunity of applying to make the change within the time stipulated, no alteration should be effected. It may be mentioned that in the matter before the Supreme Court, there was a rule, which

specifically prescribes the procedure for making the application within three years from the date of entering in the service. It is also submitted that the Resolution relied upon by the petitioner is of Secondary School Code, whereas the petitioner was seeking correction of entry in the primary school.

. The petitioner in instant case is seeking correction of both in the primary andd also the secondary school records and also service record with the Zilla Parishad.

3. It is in this background that we may consider the contention as to whether a direction should be issued for making correction in the school records of the petitioner. There is nothing before us to show that there is any bar, if there be documentary evidence available, to effect entries in the Primary school records. In the secondary school, the Secondary School Code so provides.

4. The correct date of birth of the petitioner in terms of the entries in register of Births & Deaths, ought to be 9-5-1951. In terms of

certificate issued by the School Head Master dated 28-7-2006 he had joined the school on 14-6-1958. In the school leaving certificate however, his date of birth is shown as 21-6-1949 and school admission is shown as 7-9-1962. In other words, the petitioner would have been admitted in the first standard at the age of 13 years. This would be highly improbable. This only indicates that wrong dates had been entered in the school leaving certificate. Apart from that, petitioner belongs to a Scheduled Caste. The parents of the petitioner were illiterate as per the pleadings in the petition. These entries it appears were made by the school authorities, not on the basis of any documentary evidence.

5. If we now examine the Maharashtra Civil Services (General Conditions of Service) Rules 1981, it is clear that there is no specific rule prohibiting change in the entry. However, under the instructions issued, it is proved that the entry should not be normally changed after a period of five years. In the instant case, the entry in the service record is based upon the school certificate and S.S.C. certificate. If the entry in the S.C.C. certificate is wrong,

then in our opinion, this would be a case where the respondent if the school record is corrected would result also effecting changes in the school register and leaving certificate. We must also bear in mind that most of the times, there is a backlog in so far as SC candidates are concerned. In these circumstances, no injustice would be caused to any other SC candidate. On the other hand, if we allow the wrong entries to remain, it would be perpetuating injustice. In these circumstances, we are issuing the following directions :

i) The respondent No.3 to consider the documentary evidence made available by the petitioner in the form of entries from the Birth & Death Register and if those documents are issued by the competent authority, then to effect the changes in the school records and accordingly issue the corrected document to the petitioner to that effect.

ii) If the Zilla Parishad Primary School effects entry in the Primary School Record, then respondent no.4 based on that certificate also to make corrections in school record and issue

corrected copy accordingly.

iii) If such entries are effected, the petitioner to produce relevant documents to respondent nos. 2 and 5 and the said respondents based on entries on the register of births & death and also the corrected school leaving certificate, to make the necessary corrections in the entries in the service record.

iv) The respondent no.3 to carry out the direction within two month from today. Respondent no.4 to carry out the directions within 15 days of the petitioner producing the corrected record from the respondent no.3. Respondent nos. 2 and 5 to effect the necessary entry in the service record within 15 days after the petitioner producing the corrected school leaving certificate and also the copy from the Register of Births & Deaths.

. Rule made absolute accordingly. There shall be no order as to costs.

[R.V. MORE, J.] **[F.I. REBELLOW, J.]**